UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John Doe,
Plaintiff,

v.

University of St. Thomas, Minnesota,

Defendant.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ALLOW PLAINTIFF TO PROCEED USING A PSEUDONYM

Case No.: 16-cv-1127 (WMW/KMM)

INTRODUCTION

Plaintiff brings the above-captioned action seeking relief from the unlawful actions taken and procedures employed by Defendant St. Thomas and its agents that resulted in the wrongful suspension of Plaintiff, then a first year freshman, based upon unfounded allegations of sexual assault of a female student. To protect his fundamental, constitutional privacy right and liberty interest, and to prevent further embarrassment and harm to his name and reputation, Plaintiff respectfully requests to proceed with this litigation under pseudonym John Doe.

FACTS[1]

Plaintiff was accused of sexual misconduct, in violation of St. Thomas' Sexual Misconduct Policy and Procedures as the result of a sexual encounter which took place on the night of December 11th and the morning of December 12, 2015. As a result, Plaintiff's access to campus, including his residence was revoked or severely limited.

[1] Plaintiff has set forth a detailed factual background in his Verified Complaint.

Despite the fact that the Ramsey County Attorney's Office declined to prosecute Plaintiff, after an alleged investigation of its own, St. Thomas determined that Plaintiff was responsible for non-consensual sexual intercourse and moved to suspend Plaintiff from St. Thomas until the spring semester of 2018. Plaintiff subsequently initiated a lawsuit seeking a declaratory judgment, injunctive relief, and damages based upon his discriminatory treatment by St. Thomas in its purported investigation into his action.

ARGUMENT

Pleadings are generally required to "include the names of all the parties." Fed. R. Civ. P. 10(a). However, many federal courts have permitted parties to proceed anonymously when special circumstances arise. Generally, courts allow the use of pseudonyms "[w]here it is necessary…to protect a person from harassment, injury, ridicule or personal embarrassment…." *U.S. v. Doe,* 665 F.2d 920, 922 (9th Cir. 1977) (*citing U.S. v. Doe*, 556 F.2d 391, 393 (6th Cir. 1977)). "The decision whether or not to allow the use of pseudonyms based on a need for anonymity in a particular lawsuit is left to the discretion of the trial court." *Heather K. by Anita K. v. City of Mallard, Iowa*, 887 F. Supp. 1249, 1255 (N.D. Iowa 1995) (allowing use of a pseudonym to protect plaintiff's privacy where plaintiff challenged open burning ordinance due hazardous affect on her health). Neither the Supreme Court nor the Eighth Circuit have provided guidance on when a pseudonym may be used. *Roe v. St. Louis University et al.*, No. 4:08-cv-1474, 2009 WL 910738, at *3 (E.D. Mo. April 2, 2009). However, both courts have long-allowed plaintiffs to proceed under pseudonyms. *See Heather K.*, 1255 (citing *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Poelker*, 497 F.2d 1063 (8th Cir. 1974)).

Generally, Courts "must balance the need for anonymity against the general presumption that parties' identities are public information and the risk of unfairness to the opposing party." *Does I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9^{th} Cir. 2000). This balancing test generally allows plaintiffs to use pseudonyms when: (1) "identification creates a risk of retaliatory physical or mental harm:" (2) "anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature:" and (3) "the anonymous party is compelled to admit [his or her] intention to engage in illegal conduct, thereby risking criminal prosecution." *Id.*

In the present case, the balancing test falls in favor of allowing Plaintiff to proceed under an assumed name. This is a case where Plaintiff was wrongfully accused by St. Thomas of sexual assault and suspended. Plaintiff is taking this action to clear his name after a biased and unfair investigation. In doing so, he is addressing matters that are highly personal in nature and which will subject him, and others, to embarrassment if he is required to proceed under his true name. Requiring Plaintiff to proceed under his true name in this matter will only cause the embarrassment and harm to Plaintiff's name and reputation that has already occurred to be increased exponentially as he fights to clear his name. The allegations against Plaintiff are highly personal and the sort of allegations that have a high likelihood of causing him irreparable harm for the rest of his life.

CONCLUSION

Because the totality of the circumstances heavily weighs in Plaintiff's favor, the Court should grant his motion to proceed under the pseudonyms John Doe and enter the proposed Protective Order filed herewith.

Dated: 5/6/16

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